

of injury they can cause. The phrase “working conditions” does not encompass shift differentials.

(b) *Determining similarity of working conditions.* Generally, employees performing jobs requiring equal skill, effort, and responsibility are likely to be performing them under similar working conditions. However, in situations where some employees performing work meeting these standards have working conditions substantially different from those required for the performance of other jobs, the equal pay principle would not apply. On the other hand, slight or inconsequential differences in working conditions which are not usually taken into consideration by employers or in collective bargaining in setting wage rates would not justify a differential in pay.

§ 1620.19 Equality of wages—application of the principle.

Equal wages must be paid in the same medium of exchange. In addition, an employer would be prohibited from paying higher hourly rates to all employees of one sex and then attempting to equalize the differential by periodically paying employees of the opposite sex a bonus. Comparison can be made for equal pay purposes between employees employed in equal jobs in the same establishment although they work in different departments.

§ 1620.20 Pay differentials claimed to be based on extra duties.

Additional duties may not be a defense to the payment of higher wages to one sex where the higher pay is not related to the extra duties. The Commission will scrutinize such a defense to determine whether it is bona fide. For example, an employer cannot successfully assert an extra duties defense where:

- (a) Employees of the higher paid sex receive the higher pay without doing the extra work;
- (b) Members of the lower paid sex also perform extra duties requiring equal skill, effort, and responsibility;
- (c) The proffered extra duties do not in fact exist;
- (d) The extra task consumes a minimal amount of time and is of peripheral importance; or

(e) Third persons (i.e., individuals who are not in the two groups of employees being compared) who do the extra task as their primary job are paid less than the members of the higher paid sex for whom there is an attempt to justify the pay differential.

§ 1620.21 Head of household.

Since a “head of household” or “head of family” status bears no relationship to the requirements of the job or to the individual’s performance on the job, such a claimed defense to an alleged EPA violation will be closely scrutinized as stated in § 1620.11(c).

§ 1620.22 Employment cost not a “factor other than sex.”

A wage differential based on claimed differences between the average cost of employing workers of one sex as a group and the average cost of employing workers of the opposite sex as a group is discriminatory and does not qualify as a differential based on any “factor other than sex,” and will result in a violation of the equal pay provisions, if the equal pay standard otherwise applies.

§ 1620.23 Collective bargaining agreements not a defense.

The establishment by collective bargaining or inclusion in a collective bargaining agreement of unequal rates of pay does not constitute a defense available to either an employer or to a labor organization. Any and all provisions in a collective bargaining agreement which provide unequal rates of pay in conflict with the requirements of the EPA are null and void and of no effect.

§ 1620.24 Time unit for determining violations.

In applying the various tests of equality to the requirements for the performance of particular jobs, it is necessary to scrutinize each job as a whole and to look at the characteristics of the jobs being compared over a full work cycle. For the purpose of such a comparison, the appropriate work cycle to be determined would be that performed by members of the lower paid sex and a comparison then made with job duties performed by members of the higher paid sex during